Subpart A—General Provisions

§ 503.0 Introduction.

The regulations in this part cover the enforcement of all statutory and regulatory obligations, including requirements under 8 U.S.C. 1184(c) and 20 CFR part 655, Subpart A, applicable to the employment of H–2B workers admitted under the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(H)(ii)(b), and workers in corresponding employment, including obligations to offer employment to eligible United States (U.S.) workers and to not lay off or displace U.S. workers in a manner prohibited by the regulations in this part or 20 CFR part 655, Subpart A.

§ 503.1 Scope and purpose.

(a) *Statutory standard.* 8 U.S.C. 1184(c)(1) requires the Secretary of the Department of Homeland Security (DHS) to consult with appropriate agencies before authorizing the entry of H–2B workers. DHS regulations 8 CFR 214.2(h)(6)(iv) provide that a petition to bring nonimmigrant workers on H–2B visas into the U.S. for temporary nonagricultural employment may not be approved by the Secretary of DHS unless the petitioner has applied for and received a temporary labor certification from the U.S. Secretary of Labor (Secretary). The temporary labor certification reflects a determination by the Secretary that:

(1) There are not sufficient U.S. workers who are qualified and will be available at the time and place needed to perform the labor or services involved in the petition; and

(2) The employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.

(b) *Role of the Employment and Training Administration (ETA).* The issuance and denial of labor certifications under 8 U.S.C. 1184(c) has been delegated by the Secretary to ETA, an agency within the U.S. Department of Labor (the Department or DOL), which in turn has delegated that authority to the Office of Foreign Labor Certification (OFLC). In general, matters concerning the obligations of an H–2B employer related to the temporary labor certification process are administered by OFLC, in-cluding obligations and assurances made by employers, overseeing employer recruitment, and assuring program integrity. The regulations pertaining to the issuance, denial, and revocation of labor certification for temporary foreign workers by the OFLC are found in 20 CFR part 655, Subpart A.

(c) *Role of the Wage and Hour Division (WHD).* DHS, effective January 18, 2009, under section 214(c)(14)(B) of the INA, 8 U.S.C. 1184(c)(14)(B), has delegated to the Secretary certain investigatory and law enforcement functions to carry out the provisions under 8 U.S.C. 1184(c). The Secretary has delegated these functions to the WHD. In general, matters concerning the rights of H–2B workers and workers in corresponding employment under this part and the employer's obligations are enforced by the WHD, including whether employment was offered to U.S. workers as required under 20 CFR part 655, Subpart A, or whether U.S. workers were laid off or displaced in violation of program requirements. The WHD has the responsibility to carry out investigations, inspections, and law enforcement functions and in appropriate instances to impose penalties, to debar from future certifications, to recommend revocation of existing certifications, and to seek remedies for violations, including recovery of unpaid wages and reinstatement of improperly laid off or displaced U.S. workers.

(d) *Effect of regulations.* The enforcement functions carried out by the WHD under 8 U.S.C. 1184(c), 20 CFR part 655, Subpart A, and the regulations in this part apply to the employment of any H–2B worker and any worker in corresponding employment as the result of an *Application for Temporary Employment Certification* filed with the Department on or after April 23, 2012.

§ 503.2 Territory of Guam.

This part does not apply to temporary employment in the Territory of Guam. The Department does not certify to the United States Citizenship and Immigration Services (USCIS) of DHS the temporary employment of nonimmigrant foreign workers under H–2B visas, or enforce compliance with